

Remarks – Business Roundtable – May 10, 2018

Introduction:

- Thank you to the Business Roundtable for the invitation to speak with you today.
- I am happy to be here to share USCIS' goals and priorities as they relate to employment-based immigration issues, as well as listen to your thoughts.
- I have served as Director of USCIS since October 2017, but I have served USCIS and DHS for years, as both an attorney and as a policy advisor.
- As Director, I believe that USCIS answers to the American people who look to us to ensure that we carry out our mission in a legal, fair, and transparent manner.
- The American people, through Congress, have entrusted USCIS with the stewardship of our legal immigration programs that allow foreign nationals to visit, work, live, and seek refuge in the United States.
- I have thoroughly enjoyed my time leading the agency. USCIS has dedicated and hard-working employees who work hard every day to carry out our mission.
- As I have traveled across the country, I have heard directly from the workforce. They tell me of the challenges they face. They present solutions – many of which we're working hard to follow through on.
- When I began as Director, I made it very clear that USCIS would make policy through a very thoughtful and deliberative regulatory process. From time to time, we do have to update policies via memorandum and provide guidance to the field on what the law and regulations allow or do not allow.
- But, I am committed to making sure the policies we make are done in a fair and transparent manner, and they are consistent with the law.

- We are working to update regulations and we're undertaking a thoughtful review of all employment-based immigration programs.
- I would like to offer you a general overview of the agenda at USCIS, particularly as it applies to employment based immigration issues and leave time to hear from you.

Unified Agenda and BAHA:

- As you know, President Trump was elected with a promise to focus on the economy, to promote opportunities for American workers and to reform many of our immigration policies.
- On April 18, 2017, President Trump signed the Buy American and Hire American Executive Order which, among other things, seeks to:
 - Create higher wages and employment rates for U.S. workers and to protect their economic interests by rigorously enforcing and administering our immigration laws; and
 - Directs the Department of Homeland Security, in coordination with other agencies, to advance policies to help ensure that H-1B visas (temporary nonimmigrant specialty occupation visas) are awarded to the most-skilled or highest-paid beneficiaries.
- To implement the Buy American, Hire American Order, U.S. Citizenship and Immigration Services is presently working on a combination of regulations, policy memoranda, operational changes, and enhanced fraud detection efforts.
- Regarding regulations, USCIS, like every agency, publishes their agenda on the Unified Agenda at reginfo.gov for the public to see.
- New regulatory actions related to employment based immigration announced in the Unified Agenda include the following:
 - Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens

- Rescission of International Entrepreneur Rule
 - Strengthening the H-1B Nonimmigrant Visa Classification Program
 - Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization.
- As I said, USCIS is evaluating all employment-based immigration categories – including the E, H-1B, H-2B, and L-1 visa programs. We’re working with our sister agencies on possible reforms to the B-1 visitor, STEM-OPT, and J-1 exchange visitor programs where employment authorization is available.
- I believe that regulations are the ideal way to implement policy, as they are generally subject to public notice and comment and they are long-lasting. Further, you must justify regulatory initiatives under current law.
- However, I do believe there is a place for policy memoranda as well, as they help us clarify our regulations.
- To that end, USCIS has undertaken a number of policy initiatives over the past year or so. These include:
 - The memorandum of March 2017 on H-1B computer programmers, clarifying that not all computer programmer positions are specialty occupations and reiterating that the labor condition application, including the wage level, must support the petition, as required under current regulations.
 - The February 2018 memorandum on H-1B contracts and itineraries in support of petitions where the beneficiary will be working at different locations, including a client site.
 - I can’t say much about this memorandum because it is the subject of litigation. However, I can make a few overarching statements.
 - I want to reiterate that this itinerary requirement has been a regulatory requirement for a long time.

- We are merely adhering to our regulations by requiring them when a beneficiary will work at multiple worksites.
 - Our regulations also require the petitioner to establish the beneficiary's eligibility for the entire period requested in the petition.
 - This memorandum simply confirms that petitioners must provide USCIS adjudicators with sufficient documentation to determine the time period the H-1B approval will be valid.
 - This is nothing new.
 - So if *the question* is how much or what type of corroborating evidence is needed to demonstrate eligibility for the period sought, the *answer* is: enough information for an adjudicator to make a favorable determination based on the preponderance of evidence provided.
- We have also issued an H-1B memo that clarified when petitioners must pay the higher of two fees under the American Competitive in the Workplace Act (or, "ACWIA") that go toward training U.S. workers. The intent of this memorandum is to have consistency in collecting the fee under the statutory definitions of affiliate and subsidiary, thereby ensuring that USCIS collects the higher fee where possible under the law and maximizes receipt of funds for the training of U.S. workers.
 - We have rescinded guidance regarding deference to Prior Determinations of Eligibility for Extension of Nonimmigrant Status.
 - The updated guidance instructs officers to apply the same level of scrutiny when reviewing nonimmigrant visa extension requests even where the petitioner, beneficiary and underlying facts are unchanged from a previously approved petition.
 - While adjudicators may ultimately reach the same conclusion as in a prior decision, they are not compelled to do so as a default starting point as the burden of proof to establish eligibility for an immigration benefit lies with the petitioner.

- We have also issued memoranda on the L and TN classifications.
 - As for L's, we issued a memo stating that when proxy votes are a determining factor in establishing control, the petitioner must now show the proxy votes are irrevocable from the time of filing through the time USCIS adjudicates the petition, along with evidence the relationship will continue during the approval period requested.
 - For TN's, we have clarified that professional economists requesting TN status must engage primarily in activities consistent with the profession of an economist. Individuals who work primarily in other occupations related to the field of economics — such as financial analysts, marketing analysts, and market research analysts — are not eligible for classification as a TN economist.
- USCIS created a website devoted to the Buy American and Hire American Executive Order. This webpage contains information on USCIS' efforts to implement the initiatives.

Fraud and Abuse Prevention and Detection:

- We now have email addresses listed on our agency's web page which provide easy ways for the public to report fraud and/or abuse:
 - H-1B to ReportH1BAbuse@uscis.dhs.gov
 - H-2B to ReportH2BAbuse@uscis.dhs.gov
 - We are also actively working to enhance our information sharing with the Departments of State, Labor, and Justice. This inter-agency information sharing network will help to combat and prevent immigration fraud and abuse, as well as streamline and improve existing and new processes in our immigration system, including how visas are issued.
- USCIS is also working to enhance our current site visit program to further ensure the integrity of the immigration system.
 - The Fraud Detection and National Security (FDNS) Directorate completed an average of 7,200 compliance site visits annually based on FY14-16 data.

- In April 2017, USCIS announced that FDNS would begin targeted site visits.
- USCIS is also expanding its site visit program to include L-1B petitions. USCIS is initially focusing on employers petitioning for L-1B workers who will primarily work offsite at another company or organization's location to ensure that they are complying with the requirements from the L-1 Visa Reform Act of 2004. These requirements were meant to help prevent United States workers from being displaced by foreign workers.

Conclusion:

- Whether it's new guidance or new regulations, we are guided by the notion that we must serve the American people and do more to protect U.S. workers' jobs and wages.
- The goal of our agency's work is really to protect the integrity of our immigration system.
- We do that by protecting workers and preventing possible fraud or abuse.
- Ultimately, these reforms aim at modernizing our employment-based immigration programs, and making sure they operate appropriately for generations to come.
- And to that end, I just want to touch on some operational reforms we are undertaking so that we can reduce paperwork, optimize efficiency and, as always, work towards more consistent adjudications. Moreover, these reforms will ease the burden on petitioners who, under the current scheme, are required to submit tons of paperwork to us, over and over, on issues that we have already adjudicated.
- As you already know, in 2016 we started a Known Employer pilot to assess a way to streamline the process for employers seeking to hire certain workers through employment-based visa categories.

- By modifying the process by which USCIS reviews an employer's eligibility to sponsor individuals under certain immigrant and nonimmigrant visa classifications, the Known Employer pilot is expected to reduce paperwork, costs and delays in processing these benefit requests.
- We now plan to extend this pilot program in order to gather more information. Ultimately, if the pilot is successful, the goal is to implement a system where employers can obtain precertification of issues within the adjudication – for example, the qualifying relationship of an L-1 organization – so that petitioners do not have to prove this issue each time they file a petition.
- I would like to get to a point where we can actually pre-certify certain positions as eligible for the classification – such as whether a position involves specialized knowledge.
- But the exact issues to be subject to pre-certification would have to be worked out in the pilot and then implemented via a regulation. So, this won't happen quickly, but rest assured that we are working towards it. It is a priority of mine.
- In addition, you may have seen that the Spring 2018 Unified Agenda contains an addition to our regulatory schedule related to Electronic Requests for Immigration Benefits.
- We intend to propose a regulation mandating the use of Internet-based electronic applications for the Application to Replace Permanent Resident Card (I-90) and the Application for Naturalization (N-400).
- These two applications are just a start, we intend for this regulation to include language allowing us to migrate from a paper-based system and ultimately mandate additional forms for e-filing, outside the regulatory process, as our capacity increases.
- My vision is for the agency to eventually have full e-filing for all forms. This will not only be more efficient and reduce costs for us; it will benefit

you as well, as it will obviously reduce your paperwork burden, while resulting in more consistent, faster and accurate adjudications.

- So, again, these initiatives demonstrate we are working towards an environment that is more efficient, such that the petitioners can worry less about paperwork and unnecessarily re-proving the same issues to us over and over, while receiving timely and consistent adjudications.
- In turn, we at USCIS will be able to better focus on issues requiring adjudication in each instance, limiting fraud and abuse, and ensuring the security and integrity of our immigration programs by granting benefits only to those who are eligible under the law and regulations.
- I appreciate the invitation to be here today. I am happy to take your questions.